

EXHIBIT 5  
DATE 2-9-07  
HB 138 + 373

**Testimony of Chuck Swysgood  
House Natural Resource Committee  
February 9, 2007**

**Mr. Chairman and members of the committee, for the record my name is Chuck Swysgood and I'm from Dillon, Montana. Mr. Chairman I understand that you are hearing both HB 138 and HB 373 today. I'm writing you today in support of HB 373 and in opposition to HB 138.**

**HB 373 takes a much more realistic approach to the problem both bills try to address, and that is the effect that ground water development has on surface water and senior water rights. In the 1991 session, while a member of this house, I introduced HB 745 which closed the Beaverhead and Red Rock River Basins to any further groundwater development of wells over 100 gallons a minute. The purpose of HB 745 was to allow for a five year study of the effects that large irrigation wells had on surface waters. There was concern in my district at that time, that the number of large wells used for irrigation purposes was effecting surface water flows and senior water right holders. A large number of these wells were in close proximity to the Beaverhead and Red Rock Rivers. A number of test wells were drilled in the various aquifers to check the effect and draw down of the aquifers. At initial start up of some of the irrigation wells, there was a drop in the static level in the test wells, most recovered rather fast after the wells were running. Because of limited or no adverse effect in the area studied, my question is why would you need to augment? This bill terminated on June 30 1996, and ground water development resumed in my area soon after.**

**I bring this up because both bills require an augmentation plan. HB 138 requires an augmentation plan whenever a new groundwater well is developed. This is unrealistic and in some instances it would not be possible or necessary to augment. I believe that HB 138's true intent is to stop future groundwater development from occurring, by making it impossible to meet the augmentation criteria in most instances, and the cost associated with trying to comply with the criteria of the bill would discourage and prevent most people from going forward with new development.**

**HB 373 takes a different approach to the problem by recognizing that augmentation is not necessary all the time and sets forth criteria to implement augmentation if it is a requirement for a permit to develop groundwater when there is an adverse effect on surface water or a senior water right holder.**

**In the 1993 Legislative session, while a member of the Senate, I sponsored SB 282**

which closed the Jefferson and Madison River Basins to further surface water appropriation. That bill allowed for the development of groundwater through the permit process. In fact all the bills dealing with Baisn closure in Montana, allow for groundwater development. It was not my intent nor do I believe the Legislature's intent in passing these bills that permits for groundwater development couldn't take place as long as the critera for those permits were met.

Montana law provides for a procedure for those who are effected by a permit for groundwater development to object to the DNRC. DNRC must follow the procedures set forth in 85-2-307, - 308, and - 309, MCA. If a party feels that they are still aggrieved by DNRC's final ruling, Judicial review is available to them.

Members of the Committee, I would ask that you get a copy of a recent Supreme Court case, Montana Trout Unlimited and others vs. DNRC. Pay close attention to what the Dissenting Chief Justice has to say about the Court's ruling. She hits the nail right on the head. This case is why these bills are before you today. The intent of SB 282 was never to preclude the development of " tributary " groundwater as alluded to by the Court's majority. SB 282's definition of " groundwater " was misapplied by the Court. I hope the Legislature will right the wrong committed by the Court.

Mr. Chairman in closing, I want to thank you and the members of the Committee for allowing my written testimony today. I'm sorry that I couldn't appear before you in person today, but an illness in our family keeps me from doing that.

I would ask that this Committee kill HB 138 and pass HB 373. Thank you.